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Sears, Roebuck and Co. and Local 243, International Brotherhood of Teamsters, AFL-CIO.
Case 7-CA-40189

March 23, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND
BRAME

Upon a charge filed by the Union on September 8, 1997, the General Counsel of the National Labor Relations Board issued a complaint on November 28, 1997, against Sears, Roebuck and Co., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On February 17, 1998, the General Counsel filed a Motion for Summary Judgment with the Board. On February 19, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 17, 1997, notified the Respondent that unless an answer were received by December 31, 1997, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with offices in several States and offices within the

State of Michigan, including an office and place of business at 34650 Mound Road, Sterling Heights, Michigan, has been engaged in the retail sale of home appliances and other goods. During the calendar year ending December 31, 1996, the Respondent, in conducting its business operations, derived gross revenues valued in excess of \$500,000 and purchased goods and materials valued in excess of \$50,000 which it caused to be transported to its stores in the State of Michigan directly from points located outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Leadpersons, Technicians, Truck Mechanics, Servicepersons, Shuttle Truck Drivers, Router Specialists, Service Trainees, Parts Specialists, Fork Lift Drivers and Clerk Specialists employed by the Respondent at its Sterling Heights, Michigan facility; but excluding guards and supervisors as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as such representative by the Respondent. Such recognition has been set forth in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period from October 19, 1996, through October 19, 1999. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About June 26, July 27, and August 14, 1997, the Union, by letters, requested the Respondent to provide information needed to process and/or investigate a grievance regarding the Respondent's intention to subcontract work performed by the unit. This information is necessary for and relevant to the performance of the Union as the exclusive collective-bargaining representative of the unit employees. Since about June 30, 1997, the Respondent has refused and/or failed to provide this information to the Union.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its unit employees, and has thereby engaged in unfair labor practices af-

fecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed to provide the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union the information requested.

ORDER

The National Labor Relations Board orders that the Respondent, Sears, Roebuck and Co., Sterling Heights, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to provide requested information that is necessary for and relevant to the performance of the Union's role as the exclusive collective-bargaining representative of the following unit employees:

All full-time and regular part-time Leadpersons, Technicians, Truck Mechanics, Servicepersons, Shuttle Truck Drivers, Router Specialists, Service Trainees, Parts Specialists, Fork Lift Drivers and Clerk Specialists employed by the Respondent at its Sterling Heights, Michigan facility; but excluding guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish Local 243, International Brotherhood of Teamsters, AFL-CIO, in a timely manner, the information it requested about June 26, July 27, and August 14, 1997.

(b) Within 14 days after service by the Region, post at its facility in Sterling Heights, Michigan, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps

shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 30, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 23, 1998

William B. Gould IV, Chairman

Sarah M. Fox, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to provide requested information that is necessary for and relevant to the performance of the Union's role as the exclusive collective-bargaining representative of the following unit employees:

All full-time and regular part-time Leadpersons, Technicians, Truck Mechanics, Servicepersons, Shuttle Truck Drivers, Router Specialists, Service Trainees, Parts Specialists, Fork Lift Drivers and Clerk Specialists employed by us at our Sterling Heights, Michigan facility; but excluding guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL, in a timely fashion, furnish Local 243, information it requested about June 26, July 27, and International Brotherhood of Teamsters, AFL-CIO, the August 14, 1997.

SEARS, ROEBUCK & CO.